

November 13, 2015

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, AND OTHER
INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND
THE FOLLOWING REGULATION SECTIONS, ALONG
WITH ASSOCIATED FORMS, TITLE 2,
CALIFORNIA CODE OF REGULATIONS, RELATING TO
THE STATE SCHOOL DEFERRED MAINTENANCE ACT AND
THE LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

STATE SCHOOL DEFERRED MAINTENANCE PROGRAM

THE FOLLOWING REGULATION SECTIONS ARE AMENDED: 1866 THROUGH 1866.14.

THE FOLLOWING FORMS ARE AMENDED:

Form SAB 40-20, *Five Year Plan*, (Rev. 12/10), referenced in Regulation Section 1866, and is incorporated by reference.

Form SAB 40-21, *Certification of Deposits*, (Rev. 12/10), referenced in Regulation Section 1866, and is incorporated by reference.

Form SAB 40-22, *Extreme Hardship Funding Application*, (Rev. 10/07), referenced in Regulation Section 1866, and is incorporated by reference.

Form SAB 40-23, *Fund Release Authorization*, (New 04/02), referenced in Regulation Section 1866, and is incorporated by reference.

Form SAB 40-24, *Expenditure Report*, (Rev. 12/10), referenced in Regulation Section 1866, and is incorporated by reference.

SCHOOL FACILITY PROGRAM

THE FOLLOWING REGULATION SECTIONS ARE AMENDED: 1859.2 AND 1859.102.

THE FOLLOWING FORM IS AMENDED:

Form SAB 50-04, *Application For Funding*, (Rev. 04/15), referenced in Regulation Section 1859.2, and is incorporated by reference.

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced Regulation Sections, and associated forms, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

For purposes of the State School Deferred Maintenance Program (DMP), the SAB is proposing to amend the DMP regulation sections, as referenced above, under the authority provided by Section 15503 of the Government Code and make specific reference Sections 2553, 17280, 17582-17592.5, 17070.75 of the Education Code.

For purposes of the School Facility Program (SFP), the SAB is proposing to amend Regulation Sections 1859.2 and 1859.102 under the authority provided by Section 17070.35 of the Education Code and makes specific reference Sections 17070.75, 17070.77, and 17077.40 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The DMP provided State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components. Education Code Section 17582 listed the component systems eligible to receive deferred maintenance funding. This included plumbing, heating, air conditioning, electrical systems, roofing, interior/exterior painting, floor systems, and asbestos abatement. Education Code Section 17587 authorized funds for extreme hardship projects if the work must be completed within one year. The SAB adopted regulations to implement the DMP, which were approved by the Office of Administration Law (OAL) and filed with the Secretary of State on January 13, 2003.

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the SFP. The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the OAL and filed with the Secretary of State on October 8, 1999.

The SAB, at its April 15, 2015 meeting, adopted proposed regulatory amendments to the DMP and SFP regulations. Assembly Bill (AB) 97, Chapter 47, Statutes of 2013 and Senate Bill (SB) 971, Chapter 923, Statutes of 2014 set forth provisions that require alignment in the DMP and SFP regulations.

Background and Problem Being Resolved

The proposed regulatory amendments align the DMP with the chaptered legislation which implemented the following changes:

- Removes the statutory Authority for the SAB to allocate or approve DMP funding on or after January 1, 2015.

- Provides that school districts may continue to maintain a maintenance fund and that the governing board of each school district shall have complete control of the funds and interest earned on those funds once deposited into a deferred maintenance fund.
- Provides that every public and private school maintaining any combination of classes from kindergarten to grade 12, inclusive, maintain clean restrooms to be fully operational and stocked at all times and that the school shall keep all restrooms open during school hours when pupils are not in class, and keep a sufficient number of restrooms open during school hours when pupils are in class.

The proposed regulatory amendments to the SFP regulations remove language related to the DMP and are consistent with the provisions contained in the chaptered legislation.

Anticipated Benefits of the Proposed Regulations

School district governing boards will benefit from the proposed regulations because they will have complete local control over the funds and will be responsible for ensuring compliance with the laws. School districts will also have the decision-making authority and responsibility to decide how much to spend on the facilities in order to maintain those facilities.

There is a public health and safety impact assigned to these regulations. School districts will be responsible for the major repair or replacement of existing school building components, including but not limited to plumbing, heating, air conditioning, electrical systems, roofing, floor systems, and asbestos abatement.

The proposed regulatory amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of these regulatory amendments will have a positive impact on public health and safety at K-12 public schools. School districts will have to make decisions to expend funds on their facilities in order to continue to safely house students, and to ensure compliance with the laws.

Summary of the proposed regulatory amendments are as follows:

DMP Regulations

Existing Regulation Section 1866 sets forth a set of defined words and terms used exclusively for the DMP regulations. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.1 outlines the prerequisites and defines the criteria to receiving an apportionment under the DMP, and defines the entities that may apply for DMP funding. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.2 provides direction to school districts seeking an apportionment under the DMP, and establishes the application process for receiving a DMP basic grant. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.3 specifies the process for filing and reviewing DMP applications, and establishes the application process for receiving a DMP Extreme Hardship Grant. The proposed

regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4 establishes the necessity for a school district to file a five-year plan of maintenance needs, establishes the purpose for which the Five Year Plan, Form SAB 40-20, is filed, and explains application acceptance guidelines. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.1 provides specific criteria for what types of maintenance projects may be included on a five-year plan and explains the uses of the basic grant apportionment. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.2 provides for the calculation of the annual basic grant apportionment to school districts, and defines a prorated basic grant apportionment. This Section also requires the SAB to consider, in advance of the annual basic grant apportionment, any district's unresolved complaints of failing to maintain school restroom facilities that are clean, operational, and stocked with toilet paper, soap, and paper towels or functional hand dryers. Districts that do not correct violations within a specified period of time shall be deemed ineligible for the basic grant and the funds may be distributed to other eligible districts. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.3 defines the type of revenue a district may utilize in order to deposit its maintenance matching share contribution. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.4 provides a mechanism for utilizing funds deposited by unmatched by the State. It explains how a district can obtain the use of these deposited funds for the next fiscal year. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.4.6 specifies to County Superintendents of Schools the timeframe for the release of State funds for maintenance purposes, and the process if the timeframe is not met. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5 allows a school district to apply for extreme hardship funding for multiple critical projects, and provide eligibility criteria for districts to obtain extreme hardship grants. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.1 explains what documents are required for submittal in order for the Office of Public School Construction (OPSC) to accept Extreme Hardship Grant applications. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.2 explains how the Extreme Hardship Grant is determined for the first critical hardship project and multiple critical hardship projects. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.3 assigns priorities to critical hardship projects when funding is insufficient to fully fund all critical hardship requests. This Section 1) redefines what constitutes a priority one critical hardship project; 2) specifies the necessary language to be included in a district's governing board resolution when requesting priority one status; and 3) incorporates a process for projects placed and funded from the unfunded list. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.4 sets forth the process for reimbursement of expenditures and requires OPSC approval of the project prior to incurring construction costs. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.5 explains the uses of the Extreme Hardship Grant apportionment. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.6 specifies the conditions in which school districts may receive an increase in funding for ongoing project costs. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.7 provides direction to school districts regarding the release of State funds. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.8 establishes the criteria for ensuring timely project completion or substantial progress on the project for districts that have received extreme hardship grant apportionments. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.5.9 specifies that an exemption will be provided when determining a district's contribution if the removal of an underground toxic tank cannot be funded by any other source. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.7 specifies the role of a district's governing board once funds have been apportioned and deposited in the deferred maintenance fund of the district. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.8 specifies that expenditures shall be subject to competitive bidding. This Section further clarifies that the expenditures made by a district must be in compliance with the Public Contract Code, and provide specificity with regard to awarding emergency contracts. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.9 provides direction to school districts that have received funding and specifies a timeframe to submit an expenditure report after funds have been released. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.9.1 provides for an expenditure audit process and specifies the timeframe when the audit will commence and be completed. In addition, districts are put on notice to maintain all supporting documentation pertaining to all costs associated with the extreme hardship grant apportionment expenditures. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.10 sets forth the limitation of the State's responsibility. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.12 explains the conditions of how earned interest on DMP grant funds will be treated. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.13 stipulates that work listed on the *Five Year Plan* that has been submitted and funded under the SFP or the Federal Renovation Program shall be removed from said plan and the district shall submit a revised *Five Year Plan*. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Regulation Section 1866.14 specifies that funding applications may not be amended to increase the scope of a project. This concept is current practice under the SFP and ensures equity to all project applications submitted or not yet filed and does not disadvantage projects on the DMP workload list. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making the DMP regulations inoperative.

Existing Form SAB 40-20, *Five Year Plan*, (which is incorporated by reference) is used as a summary of proposed deferred maintenance projects the applicant district plans on completing annually over the next five fiscal years using the basic grant. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-21, *Certification of Deposits*, (which is incorporated by reference) is required to be signed and submitted by the County Superintendents of Schools certifying that a school district has placed on deposit in its district deferred maintenance fund the funding required by law. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-22, *Extreme Hardship Funding Application*, (which is incorporated by reference) is used by school districts requesting DMP Extreme Hardship Grant funding for a critical project listed on the Form SAB 40-20 that meets certain criteria. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-23, *Fund Release Authorization*, (which is incorporated by reference) is used to release the Extreme Hardship Grant amount, apportioned by the SAB, to the appropriate county treasury after the district has complied with the requirements of this Form. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

Existing Form SAB 40-24, *Expenditure Report*, (which is incorporated by reference) is used by school districts to provide a detailed listing of the expenditures for the project. The proposed regulatory amendments enact the provisions of the chaptered legislation thereby making this Form inoperative.

SFP Regulations

Existing Regulation Section 1859.2 defines words and terms used exclusively for the SFP regulations. The proposed regulatory amendment changes the revision date of the Form SAB 50-04, *Application For Funding*, (which is incorporated by reference).

Existing Regulation Section 1859.102 provides 1) a mechanism for districts to certify that they have developed a restricted on-going and major maintenance plan and, 2) provides direction to districts relative to the certification requirement that their maintenance plan has been updated and public approved. The proposed regulatory amendments remove language that is consistent with the provisions of the chaptered legislation.

Existing Form SAB 50-04, *Application For Funding*, (which is incorporated by reference) is used when a district is seeking funding for a new construction or modernization project. The proposed regulatory amendments remove certification language that is consistent with the provisions of the chaptered legislation.

Statutory Authority and Implementation

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Determination of Inconsistency or Incompatibility with Existing State Regulations

The proposed regulatory amendments implement the following changes to the DMP:

- Removes the statutory Authority for the SAB to allocate or approve DMP funding on or after January 1, 2015.
- Provides that school districts may continue to maintain a maintenance fund and that the governing board of each school district shall have complete control of the funds and interest earned on those funds once deposited into a deferred maintenance fund.
- Provides that every public and private school maintaining any combination of classes from kindergarten to grade 12, inclusive, maintain clean restrooms to be fully operational and stocked at all times and that the school shall keep all restrooms open during school hours when pupils are not in class, and keep a sufficient number of restrooms open during school hours when pupils are in class.

The proposed regulatory amendments to the SFP regulations remove language related to the DMP and are consistent with the provisions contained in the chaptered legislation.

After conducting a review, OPSC, on behalf of the SAB, has concluded that these are the only regulations on this subject area, and therefore, the proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendments are within the SAB's authority to enact regulations for the DMP and SFP under Government Code Section 15503 and Education Code Section 17070.35.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs in order to comply with the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any state agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

Since the State of California will no longer provide funding specifically for deferred maintenance purposes, based on the proposed regulatory amendments, school district governing boards will have complete local control over the funds and will be responsible for ensuring compliance with the laws. School districts will benefit from the proposed regulatory amendments because with complete oversight of the funds, they will have the decision-making authority and responsibility to decide how much to spend on the facilities in order to maintain those facilities. With the shift of funding responsibility from the state to local control, it will be up to school districts to make the determination of how much to spend and on what facilities that will determine impacts to businesses and jobs.

Therefore, the proposed regulations should have a positive impact on the creation of jobs, the creation of new businesses, and the expansion of businesses in California as school districts will have complete control of the decision-making responsibilities and the expenditure of funds. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

Benefits to Public Health and Welfare, and the State's Environment

- There is a public health and safety impact assigned to these regulations. School districts will be responsible for the major repair or replacement of existing school building components, including but not limited to plumbing, heating, air conditioning, electrical systems, roofing, floor systems, and asbestos abatement. With the shift of funding responsibility from the state to local control, it will be up to school districts to make the determination of how much to spend and to prioritize health and safety projects in order to maintain their facilities for housing staff and students.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although the proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulations.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulations should not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulations only apply to school districts for purposes of funding school facility projects and maintaining school facilities, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than December 28, 2015 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 6th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Ms. Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulations coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.dgs.ca.gov/opsc> under "Resources," then click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulations coordinator named in this notice or may be accessed on the Web site listed above.